

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-67

XENGXAI YANG,

Defendant.

GOVERNMENT’S UNOPPOSED MOTION TO ADJOURN BENCH TRIAL

I. BACKGROUND

The United States of America, by and through its attorneys, Matthew D. Krueger, United States Attorney, and Andrew J. Maier, Assistant United States Attorney, hereby moves the court to adjourn the Bench Trial currently scheduled for October 27, 2020. The government also requests the matter be set for a status conference to discuss matters, including a proposed new Bench Trial date of October 29, 2020. The defendant does not oppose these requests.

II. MOTION TO ADJOURN BENCH TRIAL

The defendant is charged in a three-count indictment for crimes allegedly committed on March 15, 2019. The crimes relate to the armed robbery of an Appleton credit union where a masked subject brandished an illegal short-barreled rifle and took \$10,745 from tellers. The subject then restrained two bank employees and left the building. Officers summoned via an alarm apprehended the defendant a short distance away.

On October 16, 2020, the defendant waived his right to a jury trial in the above-captioned matter. The government joined in the waiver, and after a colloquy the Court found the defendant’s waiver to be freely, knowingly, and intelligently given. The parties are preparing materials and a

set of stipulated facts to present to the court, and anticipate having only two witnesses testify. That testimony will be on the issue of the defendant's insanity under 18 U.S.C. § 17.

Prior to the conclusion of the hearing Attorney Phillip brought to the Court's attention a potential scheduling issue with the government's witness, who was appointed by the Court to conduct the first evaluation of the defendant for purposes of determining whether the defendant's proposed insanity defense was supported. The witness expressed serious reservations about traveling to Green Bay from his home in the Beaver Dam area, and cited the high number of cases and hospitalizations during the current COVID-19 spike in Northeastern Wisconsin. The witness referred to some medical issues and being 73 years old as reasons for increased concern. The witness also indicated he was unavailable to testify in any way on October 27 due to clinical conflicts but could testify by telephone on another (non-Tuesday) date.

The Court asked the government to discuss safety measures enacted by the Court that mitigate exposure to other people and minimize risk of becoming ill. The government has discussed this issue with the witness, to no avail. The witness expressed a strong desire to avoid traveling to other parts of the state, regardless of mitigation efforts, but is available and willing to testify by telephone.

Attorneys for the defendant and government have discussed the issue, and the defendant has indicated he does not object to a brief adjournment. The defendant is also willing to agree to the government's witness appearing by telephone. Both attorneys discussed potential dates that work for the witnesses and each other, and believe an adjournment until Thursday, October 29, 2020 would permit the most effective presentation of the remaining evidence without unfair delay. Of course, that assumes court availability, something the parties do not presume to control. The parties agree that a brief scheduling conference to establish a date may be the best course of action.

IV. CONCLUSION

For the aforementioned reasons, the government respectfully requests that the current Bench Trial date be adjourned to Thursday, October 29, 2020, or to another date in the near future. The parties request the matter be set for a scheduling conference to discuss the issues raised in this motion.

Dated at Green Bay, Wisconsin, this 22nd day of October, 2020.

Respectfully submitted,

MATTHEW D. KRUEGER
United States Attorney

By:

/s Andrew J. Maier
ANDREW J. MAIER
Assistant United States Attorney